No. 14054

United States Court of Appeals for the Ninth Circuit.

GEORGE SLAFF, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Transcript of Record

Petition to Review a Decision of The Tax Court of the United States

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, California

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

APPEARANCES

For Respondent:

CLAYTON J. BURRELL, Esq.

The Tax Court of the United States

Docket No. 30464

GEORGE SLAFF, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated June 19, 1950 and as a basis of his proceedings alleges as follows:

1.

The petitioner is an individual residing at 6875 Pacific View Drive, Los Angeles, California.

2.

The notice of deficiency, a copy of which is attached and marked Exhibit "A" was mailed to the petitioner on June 19, 1950.

3.

The taxes in controversy are income and victory taxes for the taxable year ended December 31, 1943 and income taxes for the taxable year ended De-

cember 31, 1944, in the amounts, respectively, of $356.25 and $473.00.

4.

The determination of tax set forth in the said notice of deficiency is based on the following errors:

(a) The Commissioner erred in adding to income and considering as income salary of the petitioner received as an employee of the American Red Cross for services while a resident of a foreign country or countries.

(b) The Statute of Limitations of three years provided in Section 275(a) of the Internal Revenue Code had tolled before the mailing of the notice of deficiency on June 19, 1950 and the Commissioner is without authority to either assess any amount of income taxes as to this petitioner, for the taxable years 1943 and 1944, make any distraint, or begin any proceeding in court for the collection of any such taxes for the said years, over three years having elapsed after the returns for 1943 and 1944 were filed.

5.

Petitioner's income tax returns for the taxable years ending December 31, 1943 and December 31, 1944 were each filed on April 28, 1947.

6.

At no time has the petitioner, or any person duly authorized to act on behalf of the petitioner, extended the period of time within which the amount of any income taxes due under any return of the petitioner made by or on behalf of him for the tax-

able years ended December 31, 1943 and December 31, 1944 might be assessed, nor has the petitioner, or any person duly authorized to act on behalf of the petitioner, at any time agreed with the Commissioner of Internal Revenue or consented to him that such period of time within which such aforesaid income taxes might be assessed be extended for such aforesaid taxable years.

7.

Petitioner has at no time, by a signed notice in writing, filed with the Commissioner of Internal Revenue, or otherwise, waived the restrictions provided in Subsection (a) of Section 275 of the Internal Revenue Code on the assessment and collection of the whole or any part of the deficiency claimed by the Commissioner of Internal Revenue for the taxable years ended December 31, 1943 and December 31, 1944.

8.

No notice of deficiency in respect of any tax alleged to be due by petitioner for the taxable years ending December 31, 1943 and December 31, 1944, respectively, was ever sent by the Commissioner of Internal Revenue by registered mail to the petitioner within three years after petitioner's income tax returns for the years 1943 and 1944 were filed.

9.

The notice of deficiency concerning the taxable years ending December 31, 1943 and December 31, 1944 (Exhibit "A" attached hereto) which the Com-

missioner of Internal Revenue did mail to petitioner was mailed on June 19, 1950, over fifty days beyond three years after the filing of petitioner's income tax returns for the years 1943 and 1944.

10.

Petitioner was a resident of a foreign country and foreign countries from on or about September 29, 1942 to on or about December 24, 1944, and at no time from such aforesaid date in 1942 until such aforesaid date in 1944 returned to, or was a resident of, the United States

11.

Petitioner was outside of the United States for the entire period from approximately September 29, 1942 to approximately December 24, 1944.

12.

Petitioner was a resident of a foreign country or countries during the entire taxable year 1943.

13.

Petitioner's services were rendered in a foreign country and foreign countries.

14.

Petitioner's income for the period from on or about September 29, 1942 to on or about December 24, 1944 was earned from sources without the United States.

15.

Petitioner relies upon the facts alleged in paragraphs numbered 5 to 14, inclusive, as the basis of this proceeding and as sustaining the assignments of error made herein.

Wherefore, petitioner prays that this court may hear and determine this petition.

/s/ GEORGE SLAFF,
Petitioner, pro se

State of California,
County of Los Angeles—ss.

George Slaff, of full age, being duly sworn, says that he is the petitioner aforenamed; that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ GEORGE SLAFF

Subscribed and sworn to before me this 8th day of September, 1950.

[Seal] /s/ MARIAN NEWMAN,
Notary Public in and for said County and State.
My Commission expires Jan. 18, 1952.

EXHIBIT "A"

Form 1279 (Rev. July 1948)—Seal of Office of Internal Revenue Agent in Charge, Newark Division, 581 Broad Street, 90-D SN-IT-7

Treasury Department
Internal Revenue Service
Newark 2, New Jersey

Mr. George Slaff June 19, 1950
70 Pine Street, New York, New York

Dear Mr. Slaff:

You are advised that the determination of your income and victory tax liability for the taxable year ended December 31, 1943, discloses a deficiency of $356.25 and that the determination of your income tax liability for the taxable years ended December 31, 1944 and 1945, discloses deficiencies of $473.00 and $153.36, respectively, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward

it to the Internal Revenue Agent in Charge, 581 Broad Street, Newark 2, New Jersey for the attention of EHP-90D. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner,
By .....
Internal Revenue Agent in Charge

EHP/lfw
Enclosures: Statement, Form of Waiver.
GPC 16-32058-5

Statement

Mr. George Slaff, 70 Pine St., New York, N. Y.

Tax liability for the Taxable Years Ended December 31, 1943, 1944 and 1945.

Income Tax (and Victory Tax for 1943)

Year	Deficiency
1943	$356.25
1944	473.00
1945	153.36
Total	$982.61

In making this determination of your income and victory tax liability, careful consideration has been

given to the report of examination dated May 20, 1947; to your protest dated June 20, 1947 and to the statements made at the conferences held on September 17, 1947, November 16, 1948, and May 25, 1950.

It has been determined that you were not a bona fide resident of a foreign country during the period of your employment by the American Red Cross in foreign countries, and your salary is not exempt from tax under section 116 of the Internal Revenue Code.

It has been determined further that you are not entitled to a surtax exemption of $500.00 for your wife for the taxable year 1945.

A copy of this letter and statement has been mailed to your representative, Mr. Samuel Slaff, 70 Pine Street, New York, New York, in accordance with the authority contained in the power of attorney executed by you and on file in this office.

Year Ended Dec. 31, 1942—Adjustments to Net Income

Net income as disclosed by return	$5,179.32
Unallowable deductions and additional income: (a) Salary	825.00
Total	$6,004.32
Nontaxable income and additional deductions: (b) Rent	49.02
Corrected net income	$5,955.30

Year Ended Dec. 31, 1942—Explanation of Adjustments

(a) Salary received from the American Red Cross, in the sum of $825.00 is held properly includible in taxable income.

(b) Depreciation of $49.02 is allowed on improvements to property of $1,313.88 in 1941 disallowed as deductions from income of that year.

Computation of Income Tax

Net Income	$5,955.30
Less: Personal exemption	500.00
Surtax net income	$5,455.30
Less: Earned income credit	595.53
Net income subject to normal tax	$4,859.77
Normal tax	$ 291.59
Surtax	871.06
Total income tax	$1,162.65

Taxable Year Ended Dec. 31, 1943—Adjustments to Net Income

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return	$	$ ....
Unallowable deductions and additional income:		
(a) Salary	3,300.00	3,300.00
Corrected net income	$3,300.00	$3,300.00

Explanation of Adjustment

(a) Salary of $3,300.00 received from the American Red Cross is held subject to the Federal income and victory taxes.

Taxable Year Ended Dec. 31, 1943—Computation of Income and Victory Tax

1.	Income tax net income		$3,300.00
2.	Less: Personal exemption		500.00
3.	Surtax net income		$2,800.00
4.	Less: Earned income credit		330.00
5.	Balance subject to normal tax		$2,470.00
6.	Normal tax at 6 percent	$ 148.20	
7.	Surtax on item 3	388.00	
8.	Total income tax (item 6 plus item 7)		536.20
11.	Victory tax net income	$3,300.00	
12.	Less: Specific exemption	624.00	
13.	Income subject to victory tax	$2,676.00	
14.	Victory tax before credit (5 percent of line 13)	$ 133.80	
15.	Less: Victory tax credit	33.45	
16.	Net victory tax		100.35
17.	Net income tax and victory tax		$ 636.55

18.	Income tax for 1942		$1,162.65
19.	Amount of item 17 or 18 whichever is larger		$1,162.65
20.	Forgiveness feature:		
	(a) Amount of item 17 or 18 whichever is smaller	$636.55	
	(b) Amount forgiven (three-fourths of (a))	477.41	
	(c) Amount unforgiven		159.14
21.	Total income and victory tax liability		$1,321.79
22.	Income and victory tax liability disclosed by return		965.54
23.	Deficiency of income and victory tax		$ 356.25

Taxable Year Ended Dec. 31, 1944—Adjustments to Net Income

Adjusted Gross Income as disclosed by return	$ None
Unallowable deductions and additional income: (a) Salary	3,337.50
Corrected adjusted gross income	$3,337.50

Taxable Year Ended Dec. 31, 1944—Explanation of Adjustments

(a) Compensation of $3,337.50 received from the American Red Cross is held properly includable in taxable income.

Computation of Income Tax

Adjusted gross income	$3,337.50	
Surtax exemptions—two		
Income tax liability (Per "Supplement T" Tax Table		$ 473.00
Income tax liability disclosed by return		None
Deficiency of income tax		$ 473.00

Taxable Year Ended Dec. 31, 1945—Adjustments to Net Income

Net Income as disclosed by return	$7,310.89	
Unallowable deductions and additional income: (a) Rents and royalties		10.20
Corrected net income		$7,321.09

Explanation of Adjustments

(a) An error in addition on your return is corrected here.

Computation of Income Tax

1.	Net income	$7,321.09	
2.	Less: Surtax exemption	500.00	
3.	Surtax net income	$6,821.09	
4.	Surtax		$1,606.33
5.	Net income	$7,321.09	
6.	Less: Normal tax exemption	500.00	

8.	Balance subject to normal tax	$6,821.09
9.	Normal tax at 3%	204.63
10.	Income tax liability	$1,810.96
11.	Income tax liability disclosed by return	1,657.60
12.	Deficiency of income tax	$ 153.36

[Endorsed]: T.C.U.S. Filed Sept. 11, 1950.

[Title of Tax Court and Cause.]

ANSWER

Now comes the Commissioner of Internal Revenue by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition in the above-entitled proceeding admits, denies and alleges as follows:

1. Admits that the petitioner is an individual. Denies the remaining allegations of paragraph 1 of the petition. Alleges that the petitioner resides at 16 Grove Street, Passaic, New Jersey and has an office located at 70 Pine Street, New York, New York.

2. Admits the allegations of paragraph 2 of the petition.

3. Admits the allegations of paragraph 3 of the petition.

4. (a) and (b) Denies the allegations of paragraphs 4 (a) and (b) of the petition.

5. Admits that the returns for the periods here involved were filed with the Collector of Internal Revenue for the Fifth Collection District of New Jersey at Newark, New Jersey. Denies the remaining allegations of paragraph 5 of the petition.

6. Denies the allegations of paragraph 6 of the petition.

7. Denies the allegations of paragraph 7 of the petition.

8. Denies the allegations of paragraph 8 of the petition.

9. Admits that a notice of deficiency, a copy of which was attached to the petition and marked Exhibit "A" thereof, was mailed to the petitioner on June 19, 1950 by the Commissioner of Internal Revenue. Denies the remaining allegations of paragraph 9 of the petition.

10. Denies the allegations of paragraph 10 of the petition.

11. Denies the allegations of paragraph 11 of the petition.

12. Denies the allegations of paragraph 12 of the petition.

13. Denies the allegations of paragraph 13 of the petition.

14. Denies the allegations of paragraph 14 of the petition.

15. Denies the allegations of paragraph 15 of the petition.

16. Denies generally each and every allegation of

the petition not hereinabove specifically admitted, qualified or denied.

Further answering the petition, respondent alleges:

17. That the petitioner filed with the Collector of Internal Revenue for the Fifth Collection District of New Jersey at Newark, New Jersey, his income tax return for the taxable year 1943 wherein he reported no gross income.

18. That on June 19, 1950, the respondent, by registered mail, sent to the petitioner a notice of deficiency wherein he determined a deficiency in income tax for the taxable year 1943 in the amount of $356.25.

19. That in said return for the taxable year 1943 petitioner failed to include in his gross income certain income received as compensation in an amount of at least $3,300.00, which amount is properly includible therein.

20. That the petitioner omitted from gross income as reported on his return for the taxable year 1943, an amount properly includible therein which was in excess of 25 per centum of the amount of gross income reported in said return.

21. That the petitioner filed with the Collector of Internal Revenue for the Fifth Collection District of New Jersey at Newark, New Jersey his income tax return for the taxable year 1944 wherein he reported no gross income.

22. That on June 19, 1950, the respondent, by registered mail, sent to the petitioner a notice of deficiency wherein he determined a deficiency in in-

come tax for the taxable year 1944 in the amount of $473.00.

23. That in said return for the taxable year 1944 petitioner failed to include in his gross income certain income received as compensation in an amount of at least $3,337.50, which amount is properly includible therein.

24. That the petitioner omitted from gross income as reported on his return for the taxable year 1944, an amount properly includible therein which was in excess of 25 per centum of the amount of gross income reported in said return.

25. That the assessment of the deficiencies in income taxes for the taxable years 1943 and 1944 is not barred by the statute of limitations.

26. That the collection of the deficiencies in income taxes for the taxable years 1943 and 1944 is not barred by the statute of limitations.

Wherefore, it is prayed that the relief sought in the petition be denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue

Of Counsel:

HARTFORD ALLEN,
Division Counsel
JOHN E. MAHONEY,
Attorney, Bureau of Internal Revenue

[Endorsed]: T.C.U.S. Filed October 19, 1950.

[Title of Tax Court and Cause.]

REPLY

The above named petitioner, for his reply to the answer in the above entitled proceeding, admits, denies and alleges as follows:

1. Denies the allegations of paragraph "17" of the answer.

2. Admits that a notice of deficiency, a copy of which is attached to the petition and marked Exhibit "A", was mailed to the petitioner on June 19, 1950 at 70 Pine Street, New York, N. Y., respectfully refers the Court to Exhibit "A" attached to the petition and, except as herein admitted, denies the allegations of paragraph "18" of the answer.

3. Denies the allegations of paragraph "19" of the answer.

4. Denies the allegations of paragraph "20" of the answer.

5. Denies the allegations of paragraph "21" of the answer.

6. Admits that a notice of deficiency, a copy of which is attached to the petition and marked Exhibit "A", was mailed to the petitioner on June 19, 1950 at 70 Pine Street, New York, N. Y., respectfully refers the Court to Exhibit "A" attached to the petition and, except as herein admitted, denies the allegations of paragraph "22" of the answer.

7. Denies the allegations of paragraph "23" of the answer.

8. Denies the allegations of paragraph "24" of the answer.

9. Denies the allegations of paragraph "25" of the answer.

10. Denies the allegations of paragraph "26" of the answer.

Wherefore the petitioner prays that this Court may hear and determine the petition.

/s/ GEORGE SLAFF,
Petitioner, pro se

Duly Verified.

[Endorsed]: T.C.U.S. Filed December 4, 1950.

[Title of Tax Court and Cause.]

TRANSCRIPT OF TESTIMONY

Circuit Court of Appeals Courtroom, 16th Floor, Federal Building, Los Angeles, California. May 19, 1952—11:15 a.m.

(Met pursuant to notice.)

Before Honorable Clarence V. Opper, Judge.

Appearances: George Slaff, 6875 Pacific View Drive, Los Angeles 28, California, appearing on his own behalf. Clayton J. Burrell, (Honorable Charles W. Davis, Chief Counsel, Bureau of Internal Revenue), appearing for the Respondent.

Proceedings

The Clerk: Docket No. 30464, George Slaff.

The Court: State your appearances for the record, please.

Mr. Slaff: George Slaff, in person.

Mr. Burrell: Clayton J. Burrell, for Respondent. I am ready.

The Court: Proceed.

Mr. Slaff: Shall I be sworn, your Honor?

The Court: Well, I thought perhaps someone might want to make an opening statement.

Opening Statement on Behalf of the Petitioner
By Mr. Slaff

Mr. Slaff: I shall, if the Court please. There are two issues involved in this case, and only two. They are whether Petitioner is liable for taxes, having been claiming to be a bona fide resident of a foreign country during the years 1943 and 1944, having been in the service of the American Red Cross overseas during that period. More specifically, through all of the year 1943 and until December 22 or 24, 1944.

The other issue involved is whether the three-year statute of limitations under Section 275 (a), I believe, or the five-year statute of limitations, under Section 275 (c), is applicable, no notice of deficiency having been filed until more than three years, although less than five years after the returns were filed.

I have only one witness; myself.

The Court: Do you have anything you want to add to that?

Mr. Burrell: Your Honor, that is a fair statement of the issues involved in this case.

The Court: Very well.

Whereupon,

GEORGE SLAFF

called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: Please be seated. State your name and address for the record, Mr. Witness.

The Witness: My name is George Slaff. I live at 6875 Pacific View Drive, Los Angeles.

Direct Examination

The Court: You wish to make a statement, Mr. Slaff?

The Witness: Yes, sir. In the year 1942, having been classified as 4-F by my Draft Board because of physical disability, and having been refused entrance into three of the branches of the Armed Services, to which I applied, similarly on grounds of physical disability, I found employment with the American Red Cross approximately June or July of 1942. I was employed by the American Red Cross, with specific request on my part for service overseas.

In September of 1942 I was ordered by the American Red Cross for service in England.

I applied for and received an American passport and traveled to England as a civilian passenger on a civilian airline. I believe the American Export Line, on one of its clipper ships.

(Testimony of George Slaff.)

I left the United States approximately the end of September 1942, September 29th, I believe is the date of record, and arrived in England and I was assigned to a station in Greenock, Scotland, where I served with the American Red Cross approximately from the beginning of October 1942 until December 1942.

During that time I did not live at the American Red Cross quarters, but lived with a civilian family in Greenock. The name of the family was Mr. and Mrs. R. Gilchrist. I had a room in their home.

In December of 1942 I was assigned by the American Red Cross to serve in North Africa, and proceeded from England to North Africa, and lived there sometime toward the end of December 1942, sometime before Christmas.

In North Africa I served with the American Red Cross in the capacity of executive aide or executive assistant to the Delegate to North Africa. In Algiers I had an apartment for a time, a house for a time. I was in North Africa from approximately December of 1942 until approximately October of '43, when I was assigned for service in Italy.

I served in Italy—I arrived in Italy, in Naples, approximately October of 1943 and became director of food supply for the American Red Cross. In Italy I lived for—in Naples, while I was there, I lived for the bulk of the time that I was there in an apartment with one Ralph Howard, who was then correspondent for the National Broadcasting Company. We had our apartment and had a servant.

(Testimony of George Slaff.)

I was in Italy in the capacity I have mentioned from the time I arrived until approximately August, late August of 1944. That would be, for the record, from October of 1943 until approximately August of 1944.

I was then assigned to service in France, an entrance having been made into France through Southern France shortly before then, and I served in France at Marseilles and Dijon until approximately December, the middle of December of 1944.

Similarly, in Dijon I maintained or had an apartment in which I lived. And I might state, because I think it is relevant, obviously, and I think it should be stated, that my intention was not to remain away from the United States permanently. My intention—I wish to make it clear, in all fairness—my intention was to return to the United States when and if, I might say, my service with the American Red Cross overseas was completed.

I intended, however, and did intend to remain abroad as long as I was required to remain abroad, whether that might take a year or two years or five years; whatever the exigencies of that particular situation might demand.

I was returned to the United States in December of 1944 by the American Red Cross, on leave, and for the purpose of making certain appearances here in the United States on behalf of the American Red Cross.

As I say, I returned approximately, I think the

(Testimony of George Slaff.)

date was December 22, 1944. And in May, April or May of 1945 I left the service of the American Red Cross, having been requested to return to the service of the Government with the Federal Power Commission.

I am advised by counsel that I was liable for taxes in England and in France during the war. And I wish to state, for the record, however, that no taxes were paid by me, either in England or France, during the war.

On April 28, 1947, my returns for the years 1943 and 1944 were filed. And I should like to call upon counsel at this time to present those returns for the record, so they may be put in evidence.

Mr. Burrell: I will be glad to do that, your Honor.

Can you identify these as your returns, Mr. Slaff?

The Witness: Yes, those are both my returns for the years 1943 and '44, respectively.

Mr. Burrell: We will offer them as Respondent's Exhibits A and B, if your Honor please, and ask permission of the Court to substitute photostats at a later date.

The Court: Do you prefer to have them put in as joint exhibits?

The Witness: That is perfectly all right. It is a matter of complete indifference, so long as they are received in evidence.

(Testimony of George Slaff.)

The Court: All right. They will be received in evidence and marked.

The Clerk: Respondent's Exhibits A and B.

(The documents above referred to were received in evidence and marked Respondent's Exhibits A and B.)

DELINQUENT RETURN filed with I.A.A. Lokoff 7/28/47 6

FORM 1040
Treasury Department
Internal Revenue Service

UNITED STATES
INDIVIDUAL INCOME AND VICTORY TAX RETURN

Page 1

1943

THE TAX COURT OF THE U.S. DIV. 14 DOCKET 30469 ADMITTED IN EVIDENCE MAY 1 9 1952 ~~PETITIONER'S~~ EXHIBIT A RESPONDENT'S

OPTIONAL FORM 1040A MAY BE FILED INSTEAD OF THIS FORM IF GROSS INCOME IS REPORTED ON THE CASH BASIS FOR THE CALENDAR YEAR, IS NOT MORE THAN $5,000, AND CONSISTS WHOLLY OF SALARY, WAGES, OTHER COMPENSATION FOR PERSONAL SERVICES, DIVIDENDS, INTEREST OR ANNUITIES

FOR CALENDAR YEAR 1943

or fiscal year beginning ....., 1943, and ending ....., 1944

PRINT NAME AND ADDRESS PLAINLY. (See Instruction C)

GEORGE SLAFF
(Name) (Use given names of both husband and wife, if this is a joint return)
16 GROVE ST
(Street and number, or rural route)
PASSAIC N.J.
(City or town) (State)

Occupation ATTORNEY Social Security number, if any .....

(Do not use these spaces)
File Code
Serial No. 212 4401
District
(Cashier's Stamp)

COMPUTATION OF NET INCOME

INCOME	Employer's Name	City and State	Column 1 Income Tax Net Income	Column 2 Victory Tax Net Income
1. Salary, Wages, and Compensation for Personal Services (Members of armed forces see Instruction I)	American Red Cross – Overseas Sept 1942 to Dec 1944. Income received 3300; exempt under section 116 I.R.C.; therefore no taxable income		RECEIVED 22 APR 28 1947 COLL. INT. REV. 5TH DIST. N. J.	
Total				
Less: Deductible expenses. (Attach itemized statement)			$ None	$ None
Compensation after deductible expenses				
2. Dividends			$	$
3. Interest on corporation bonds, bank deposits, notes, etc.				
4. Interest on Government obligations, etc.: (a) From line A (8), Schedule A				
(b) From line B (5) and (3), Schedule A				XXXXXXX XX
5. Annuities				
6. (a) Net gain (or loss) from sale or exchange of capital assets. (From Schedule B)				
(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule B)				XXXXXXX XX
7. Rents and royalties. (From Schedule C (1))				
8. Net profit (or loss) from business or profession. (From Schedule C (2))				
(State total receipts, from line 1, Schedule C (2) $ .....)				
9. Income (or loss) from partnerships; fiduciary income; and other income. (From Schedule C (3))				
10. Total income in items 1 to 9			$ None	$ None
DEDUCTIONS				
11. Contributions. (Explain in Schedule D)			$	XXXXXXX XX
12. Interest. (Explain in Schedule E) (See Instructions 12 and 16 for Victory Tax deduction)				XXXXXXX XX
13. Taxes. (Explain in Schedule F) (See Instructions 13 and 16 for Victory Tax deduction)				XXXXXXX XX
14. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule G)				XXXXXXX XX
15. Medical, dental, etc., expenses. (Explain in Schedule H)				XXXXXXX XX
16. Other deductions authorized by law. (Explain in Schedule C)				$
17. Total deductions in items 11 to 16			$	$
18. Income Tax net income (item 10, col. 1, less item 17, col. 1)			$ None	XXXXXXX XX
19. Victory Tax net income (item 10, col. 2, less item 17, col. 2)			XXXXXXX XX	$ None

INCOME AND VICTORY TAX

20. Unpaid balance of 1943 Income and Victory Tax (from line 22, page 4) ..... $ None

21. You may postpone, until not later than March 15, 1945, payment of the amount you owe up to one-half of item 19 (c), page 4. Enter the amount postponed. (For persons whose surtax net income for 1942 or 1943 exceeded $20,000, see Schedule L-2) .....

22. Amount paid with this return (item 20 less item 21) ..... $

23. Refund or Credit — If the total of your payments (line 21 (d) on page 4) is larger than your tax (line 20 on page 4), enter the difference ..... $
Indicate by a check mark (✓) what you want done with this overpayment: Refund it to me ☐; Apply it on my 1944 estimated tax ☐.

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Signature of person (other than taxpayer or agent) preparing return) (Date) — Signature of taxpayer: George Slaff — (Date) 3/28/47

(Name of firm or employer, if any)

Signature of taxpayer: Gertrude Slaff

(If this is a joint return (all lines of special interest be signed by both husband and wife. If a return made by an agent must be accompanied by power of attorney. (See Instruction C))

10—47—70-4

Respondent's Exhibit A
(Continued)

6

COMPUTATION OF INCOME AND VICTORY TAX. (See Tax Computation Instructions)

			Page
1. Income Tax net income (item 18, page 1)			
2. Less: Personal exemption. (From Schedule I-(1))			$ None
3. Credit for dependents. (From Schedule I-(2))	$		
4. Balance (surtax net income)			
5. Less: Certain interest on Government obligations (item 4 (a), page 1)			$
6. Earned income credit. (From Schedule J-(1) or J-(2))	$		
7. Balance subject to normal tax			
8. Normal tax (6% of line 7)			$ None
9. Surtax on amount in line 4. (See Surtax Table, page 9 of Instructions)			$ None
10. Total Income Tax (line 8 plus line 9). (If Schedule B is used and alternative tax computation made, enter line 16, Schedule B)			
11. Less: Income Tax paid to a foreign country or U. S. possession. (Attach Form 1118)			$ None
12. BALANCE OF INCOME TAX			
13. NET VICTORY TAX (line 6 of Victory Tax Schedule, below)			$
14. Total of lines 12 and 13			
15. Income Tax paid at source on tax-free covenant bond interest. (See Footnote 1)			$
16. Line 14 less line 15			
17. Income Tax for 1942. (See Statement, Form 1125, from Collector) (First, see page 4 of Instructions)			$
18. Enter line 16 or 17 whichever is LARGER. (Members of the armed forces see page 4 of Instructions)			$
19. FORGIVENESS FEATURE (Don't fill in (a), (b), and (c) below, if either line 16 or 17 is $50 or less):			$
(a) Enter line 16 or 17, whichever is SMALLER			
(b) Enter $50 or three-fourths of (a), immediately above, whichever is LARGER. This is the FORGIVEN part of the tax	$		
(c) Enter the UNFORGIVEN part of the tax which is the BALANCE (subtract (b) from (a)). (See Footnote 2)	$		
20. TOTAL INCOME AND VICTORY TAX. (Total of lines 18 and 19 (c))			
21. Less: (a) Income and Victory Tax withheld by employer			$ None
(b) Income Tax paid on 1942 income	$		
(c) Tax paid on 1943 income on account of Declaration of Estimated Tax			
(d) Total payments			
22. UNPAID BALANCE OF INCOME AND VICTORY TAX. (If line 20 is larger than line 21 (d), enter the difference here and also as item 20, page 1; if not, see item 23, page 1)			$ None

FOOTNOTE 1.—If you claim a credit in line 15, disregard lines 18 (a) and (b), complete Schedule L-1 on page 4 of Instructions, and enter result in line 19 (c). Attach completed schedule.

FOOTNOTE 2.—If your surtax net income for 1942 or 1943 exceeded $20,000, requiring you to complete Schedule L-2, enter here the amount shown on line 10 or 27 of such schedule, $ and increase 18 (c) by such amount.

Schedule K.—VICTORY TAX. (See Tax Computation Instructions)

1. Victory Tax net income (item 19, page 1)		$ None
2. Less: Specific exemption ($624 if return reports income of only one person; otherwise, see Instructions, page 3)		
3. Income subject to Victory Tax (line 1 less line 2)		$
4. Victory Tax before credit (5% of line 3)		$
5. Victory Tax credit:		
(a) Single person, or married person not living with husband or wife: 25% (plus 2% for each dependent) of line 4, but not more than $500 (plus $100 for each dependent)		$
(b) Married person living with husband or wife if separate returns are filed: 40% (plus 2% for each dependent) of line 4, but not more than $500 (plus $100 for each dependent)		
(c) Married person living with husband or wife if only one return or a joint return is filed, or head of a family: 40% (plus 2% for each dependent) of line 4, but not more than $1,000 (plus $100 for each dependent). (See Schedule I-(2), for exclusion of one dependent by head of a family)		$
6. Net Victory Tax (line 4 less line 5). (Enter in line 13, above)		$ None

Schedule L.—To be used only by individuals whose surtax net income for 1942 or 1943 exceeded $20,000
Schedule to determine whether Section 6 (c) of the Current Tax Payment Act of 1943 is applicable

1. Surtax net income for 1942 (item 23, Form 1040 (1942))	$
2. Surtax net income for 1943 (line 4, above)	$
3. Surtax net income for base year, $ ..... plus $20,000: $ ..... (Check year used 1937 ...; 1938 ...; 1939 ...; 1940 .....)	

If either line 1 or 2 is greater than line 3, separate Schedule L-2 should be secured from the collector and filed with and as a part of this return.

Note.—If a joint return is filed for either 1942 or 1943 and separate returns for the other of such years, enter the aggregate of the separate surtax net income for the separate return year. The surtax net income to be entered in line 3 shall be determined in the same manner as the surtax net income entered in line 1 or 2, whichever is the lesser.

☆ U. S. GOVERNMENT PRINTING OFFICE : 1948 16—87139-1

DELINQUENT RETURN found WITH I.R.A.L. Copy 4/28/47

File this return with Collector of Internal Revenue on or before March 15, 1945. (Any balance of tax due (Item 8, below) must be paid in full with return. See separate instructions for filling out return.

Page 1

FORM 1040
Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1944

1944

THE TAX COURT OF THE U.S. DOCKET 3047 FILED IN EVIDENCE MAY 1 9 1952 EXHIBIT B RESPONDENT'S

or fiscal year beginning ....., 1944, and ending ....., 1945

EMPLOYEES.—Instead of this form, you may use your Withholding Receipt, Form W-2 (Rev.), as your return, if your total income was less than $5,000, consisting wholly of wages shown on Withholding Receipts or of such wages and not more than $100 of other wages, dividends, and interest.

Do not write in these spaces
File Code
Serial No. 7844701
District
(Cashier's Stamp)

NAME GEORGE SLAFF
(PLEASE PRINT. If this return is for a husband and wife, use both first names)

ADDRESS 16 GROVE ST.
(PLEASE PRINT. Street and number or rural route)

PASSAIC N.J.
(City or town, postal zone number) (State)

Social Security No. (if any) .....

Your Exemptions

1. List your own name. If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband). List names of other close relatives with 1944 incomes of less than $500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

NAME (Please print)	Relationship	NAME (Please print)	Relationship
Your name GEORGE	x x x x x x x x x x		
EVE	WIFE		

RECEIVED APR 28 1947

Your Income

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1944, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

PRINT EMPLOYER'S NAME	WHERE EMPLOYED (CITY AND STATE)	AMOUNT
Government Paid	Camp Upton	$
Sept 1942 to Dec 1944		
Length 33 C.; without		
Section 116 I.R.C.; therefore no taxable income		

Enter total here → $ None

3. Enter here the total amount of your dividends and interest (including interest from Government obligations unless wholly exempt from taxation) .....

4. If you received any other income, give details on page 3 and enter the total here .....

5. Add amounts in items 2, 3, and 4, and enter the total here ..... $ None

If item 5 includes income of both husband and wife, show husband's income here, $..... wife's income here, $.....

How To Figure Your Tax

IF YOUR INCOME WAS LESS THAN $5,000.—You may find your tax in the tax table on page 2. This table, which is provided by law, is based on the same tax rates as are used in the Tax Computation on page 4. The table automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 4.

IF YOUR INCOME WAS $5,000 OR MORE.—Disregard the tax table and compute your tax on page 4. You may either take a standard deduction of $500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

Tax Due or Refund

6. Enter your tax from table on page 2, or from line 15, page 4 ..... $ None

7. How much have you paid on your 1944 income tax?
   (A) By withholding from your wages (Attach Withholding Receipts, Form W-2) $ .....
   (B) By payments on 1944 Declaration of Estimated Tax .....
   Enter total here →

8. If your tax (item 6) is larger than payments (item 7), enter BALANCE OF TAX DUE here ..... $ None

9. If your payments (item 7) are larger than your tax (item 6), enter the OVERPAYMENT here ..... $ .....

Check (✓) whether you want this overpayment: Refunded to you [ ]; or Credited on your 1945 estimated tax [ ]

If you filed a return for a prior year, what was the latest year? .....

To which Collector's office was it sent? .....

To which Collector's office did you pay amount claimed in item 7 (B), above? .....

Is your wife (or husband) making a separate return for 1944? ("Yes" or "No")

If "Yes," write below

Name of wife (or husband) .....

Collector's office to which sent .....

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return) (Date)

(Name of firm or employer, if any)

George Slaff 3/28/47
(Signature of taxpayer)

Eve Slaff
(If this is a joint return of husband and wife, it must be signed by both)

(SEE TAX TABLE BELOW)

16—41000-1

(Testimony of George Slaff.)

The Witness: As appears on the face of those exhibits, they were filed on April—both filed on April 28, 1947, with the Collector of Internal Revenue for the Fifth District of New Jersey.

Similarly, as appears on the face of both exhibits, on the face of Exhibit A, my return for 1943, I stated, under the heading on the first page of the exhibit, of the return, Exhibit A, "Income," the following:

> "American Red Cross—(overseas September 1942 to December 1944) income received $3,-300.00; exempt under Section 116 I.R.C., therefore, no taxable income."

Similarly, my return for the year 1944, Exhibit B, I stated also, on the face of page 1 of that exhibit, the same words:

> "American Red Cross—(overseas September 1942 to December 1944), income received $3,-300.00. Exempt under Section 116 I.R.C. Therefore, no taxable income."

I wish to state for the record that no extension of the statute of limitations has been filed or entered into or made by me or by anyone authorized to act on my behalf. Nor has any waiver of the statute of limitations been filed, executed by myself or by anyone acting on my behalf.

As appears from the pleadings, and as is the fact, in any event, notice of deficiency was mailed to me on June 19, 1950, more than three years after the returns were filed; which returns had showed my

(Testimony of George Slaff.)
total gross income to be $3,300.00 for each one of the years in question.

That concludes my testimony, your Honor.

Mr. Burrell: Your Honor please, I would like to question the witness on cross examination.

The Court: All right.

Cross Examination

Q. (By Mr. Burrell): Mr. Slaff, what is your business or profession?

A. I am an attorney.

Q. Were you a member of the Bar in 1943 and '44, when these returns were filed?

A. Yes, I was. The returns were filed in 1947, Mr. Burrell. However, I was a member of the Bar in '43, '44 and '47.

Q. Were you a practicing attorney prior to the war and prior to your going overseas?

A. Yes.

Q. What was your professional relationship? Were you in a firm somewhere in the East, or what was your circumstance in that regard?

A. At what time?

Q. In 1942, prior to your accepting the Red Cross position.

A. Prior to 1942 I was counsel to the Federal Power Commission in Washington, D. C.

Q. Did you obtain a leave of absence from that position, or did you resign?

A. No, I didn't—I am quite sure I did not resign, Mr. Burrell. I would assume that I received

(Testimony of George Slaff.)

a leave of absence and, in any event, I returned to the Federal Power Commission in a different capacity on termination of my services with the American Red Cross.

So the record will be complete in that respect, I think before I left for overseas, or for service with the American Red Cross I probably held the position of principal attorney with the Federal Power Commission.

When I returned I was engaged as chief counsel of the Federal Power Commission, and not general counsel, but chief counsel in charge of a nationwide investigation of natural gas resources, et cetera. It was in a different capacity, however, from that which I had left in 1942.

Q. Do you have a family, Mr. Slaff?

A. I have now.

Q. Did you have in 1942?

A. Well, if you mean a wife and children, no. I was not married. And I might, if I may say so at this time, state what I should have stated on direct examination, that on leaving the United States in September of 1942 I gave up the apartment which I had maintained in Washington up to that time, which was the only place of permanent abode or residence or domicile which I had maintained in the United States up to that time.

Q. When were you married, Mr. Slaff?

A. Shortly after my return from overseas.

Q. Did you own any real property in the United States prior to your leaving for overseas?

(Testimony of George Slaff.)

A. Yes, sir.

Q. What disposition, if any, did you make of it while you were overseas, while you were gone overseas?

A. Let me make the record clear. That property was in my name, and when I left for overseas I transferred that property to my brother.

Q. That was a complete disposition or was it still subject to your——

A. No, it was a complete disposition.

Q. It was your intention to return to the United States when your tour of duty overseas was finished?

A. Let me put it this way: It was my hope to return to the United States. Yes, certainly, I intended to return to the United States if I was physically able to do so.

Q. In that regard, your intention would be no different from a boy serving in uniform overseas, or something of that sort?

A. I should prefer not to speak for the intentions of the men serving in uniform. I can speak for my own.

Mr. Burrell: I believe that is all.

The Court: Do you have any redirect?

The Witness: No, I have no further testimony.

The Court: I am not sure I heard you mention this one way or the other: But referring now to the two tax returns that have been produced and marked in evidence, Respondent's Exhibits A and B, I notice that they are both termed "Delinquent Returns."

(Testimony of George Slaff.)

Of course, they would look on their face as though they were delinquent, bearing in mind the years for which they are filed and the dates which they appear to have been filed.

Was there any correspondence or communication of any kind between you and the Bureau, giving you leave to file those late returns?

The Witness: Yes, there was—not by me, but on my behalf, sir. By my brother, who acted as my attorney, in fact.

The Court: Since you are only answering my question, I am not going to ask you the question in such a way as to call for inadmissible evidence.

If there is anything like that and if it is in writing, of course, it would be the best evidence. I am simply saying that had your answer been "No," that would have been different.

If you want to go into that further, of course, you will have an opportunity to do that.

The Witness: Well, I must say I don't understand the contention in which your Honor raises the fact that this is marked "Delinquent Return."

The Court: One of the things I have in mind—perhaps I shouldn't be so uninformed about it myself—but I can't recall any cases which deal with the question of the running of the statutes in the case of a delinquent return.

I am raising the point now because this is the only time I will have the chance to raise it.

I will expect, of course, that you will deal with that in your brief, but that wouldn't take the place

(Testimony of George Slaff.)

of any evidence or any testimony that might bear on the question.

The Witness: Would your Honor give me a moment?

The Court: Yes.

The Witness: I can only add, your Honor, that an affidavit was filed on my behalf by my attorney in 1947, January in 1947, or thereabouts, stating why the return had not been filed earlier and asking that no delinquent penalties be levied, and no delinquent penalties were levied. If that adds anything to the——

The Court: I can see there is no delinquency penalty involved. It apparently was not raised in either the deficiency notice or the answer.

The Witness: That is correct.

Mr. Burrell: May I ask another question of this witness in this very regard?

The Court: Yes.

Q. (By Mr. Burrell): Are these returns, Respondent's Exhibits A and B, the only returns filed with regard to the years 1943 and '44?

A. Yes, they are.

Q. No other returns were filed?

A. No.

The Court: Is that your case?

The Witness: That is all.

Mr. Burrell: That is all.

The Court: You may be excused.

(Witness excused.)

The Court: Mr. Slaff, do you want time for filing a brief?

Mr. Slaff: Yes, your Honor.

The Court: How much time?

Mr. Burrell: Your Honor please, I would like the privilege of filing a consecutive brief, some reasonable time after the Petitioner has filed his brief.

Mr. Slaff: I have no objection. I should think we could file them concurrently and get them over with that much faster.

The Court: This is kind of a roundabout way of giving the Respondent more time.

Mr. Slaff: Apparently, I will have an opportunity to——

The Court: Is 45 days enough for your original brief?

Mr. Slaff: Ample.

The Court: How much time do you want for your answering brief?

Mr. Burrell: 30 days. Would that be agreeable?

The Court: 30 days thereafter for Respondent to answer.

How much time do you want for your reply?

Mr. Slaff: I should say 15 days.

The Court: 15 days thereafter for the Petitioner to reply.

Read those dates, please, Mr. Clerk.

The Clerk: Yes, sir.

Mr. Burrell: Your Honor please, I would like to have the Court's permission to have the original briefs returned to us and substitute the photostats.

The Court: You mean the exhibits?

Mr. Burrell: Yes.

The Court: You want permission to withdraw them and photostat them?

Mr. Burrell: Yes.

The Court: That may be done.

Mr. Clerk: Petitioner's brief is due on July 3rd. Respondent's answering brief, on July 4th.

Petitioner's reply brief, on August 19th.

Mr. Slaff: In view of the possibility I might be on vacation at that time, might I ask for a month?

The Court: For the reply?

Mr. Slaff: Yes.

Mr. Burrell: I suppose I will have an opportunity to file a reply brief to that?

The Court: Yes. 30 days for reply instead of 15.

Mr. Burrell: That will be September 3rd instead of August 19th?

The Clerk: Yes.

(Whereupon, at 12:00 o'clock noon, Monday, May 19, 1952, the hearing in the above-entitled matter was closed.)

[Endorsed]: T.C.U.S. Filed June 12, 1952.

[Title of Tax Court and Cause.]

MEMORANDUM FINDINGS OF FACT AND OPINION

George Slaff, pro se.

Clayton J. Burrell, Esq., for the respondent.

Opper, Judge: This proceeding is for a redetermination of a deficiency in income and victory taxes for 1943 and in income tax for 1944 in the amounts of $356.25 and $473, respectively. Two questions are presented for our decision:

1. Whether petitioner was a bona fide resident of a foreign country or countries during the period in question and thus exempt from payment of tax pursuant to section 116 of the Internal Revenue Code.

2. Whether the applicable Statute of Limitations period is three years as provided in section 275(a) of the Internal Revenue Code, or five years as provided in section 275(c) of the Internal Revenue Code.

Findings of Fact

For reasons of physical disability, petitioner, an individual, was classified by his draft board as 4-F and was refused entrance into three branches of the Armed Services in which he sought to enlist. Petitioner applied for overseas service with the American Red Cross (hereinafter called "Red Cross") and was employed by that organization in June or July 1942. He received a leave of absence from the Federal Power Commission where he held the position of principal attorney, made a complete disposi-

tion of the real property he owned in the United States, and gave up his apartment in Washington, D. C., which was the only permanent abode or residence he had maintained in the United States up to that time.

Having applied for and received an American passport, he was ordered by the Red Cross to England in September 1942. He flew there as a civilian passenger on a civilian airline. From October to December 1942, he served with the Red Cross in Greenock, Scotland and lived there with a civilian family rather than at the Red Cross quarters.

In December 1942, petitioner was assigned to North Africa where he served as Executive Aide or Executive Assistant to the Delegate to North Africa until October 1943. While in North Africa he had an apartment in Algiers for a time and a house for a time.

From October 1943 until August 1944, petitioner served in Naples, Italy, as Director of Food Supply for the Red Cross. For the bulk of his time there, he shared an apartment with a correspondent of the National Broadcasting Company.

In August 1944, petitioner was assigned to France, serving at Marseilles and Dijon until the middle of December 1944. In Dijon, he lived in an apartment.

In December 1944, petitioner was returned to the United States in order to make appearances on behalf of the Red Cross. The Federal Power Commission subsequently requested petitioner to return to its service. He did so in April or May of 1945,

being engaged as chief counsel in charge of a nationwide investigation of natural gas resources, a different capacity from that which he had left in 1942.

Petitioner's intention upon going overseas was to return to the United States after serving abroad whatever period of time might be required. He was advised by counsel that he was liable for taxes in England and France during the war, but he paid no taxes to either country.

On April 28, 1947, petitioner filed his returns for the years 1943 and 1944 with the collector of internal revenue for the fifth district of New Jersey. He stated on the first page of his 1943 return under the heading "Income" the following:

> American Red Cross—Overseas Sept. 1942 to Dec. 1944. Income received $3300; exempt under Section 116 I.R.C.; therefore no taxable income.

After the words "Enter total here," he wrote "None." A similar statement was made in the return for 1944.

Notice of deficiency was mailed by respondent to petitioner on June 19, 1950, more than three years after the returns were filed. No waiver extending the Statute of Limitations has been filed, entered into or made by petitioner or anyone acting on his behalf.

Petitioner was not a bona fide resident of a foreign country or countries during either 1943 or 1944.

Petitioner omitted from gross income reported for the years 1943 and 1944 amounts properly in-

cludible therein which, for each of said years, are in excess of 25 per centum of the amount of gross income stated in the respective returns.

Opinion

The preliminary question is whether under section 275(c) respondent had five years within which to determine a deficiency prior to the running of the Statute of Limitations.[1] This question has already been decided adversely to petitioner's contention. It is not sufficient that the receipt of the amounts in question appears on the return.

> * * * Although an amount may be disclosed fully on the return, if it is not reported as a part of the gross taxable income, it is not a part of the "gross income stated in the return" as that phrase is used in section 275(c). * * * [M. C. Parrish & Co., 3 T. C. 119, 130-131, affd. (C.A. 5), 147 F. 2d 284. (Emphasis added.)

The treatment by petitioner of the disputed item is exemplified by the following quotation from his 1944 tax return:

---

[1] "Sec. 275. Period of Limitation Upon Assessment and Collection.
* * * * *

"(c) Omission from Gross Income.—If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 5 years after the return was filed."

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1944, Before Pay-Roll Deductions for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming traveling or reimbursed expenses, see Instruction 2.

Print Employer's Name Where Employed (City and State) Amount: American Red Cross (Overseas Sept. 1942 to Dec. 1944) Income received $3300; exempt under Section 116 I.R.C.; therefore no taxable income. Enter total here $ None.

The claim that such payments were exempt from income tax is at war with the assumption that the amounts are "properly includible" in his gross income. His statement necessarily results in a failure to include that amount or in fact any amount whatever in his gross income. See American Foundation Co., 2 T. C. 502; Emma B. Maloy, 45 B.T.A. 1104. Since this was petitioner's only income the conclusion is inevitable that not 25 per cent but 100 per cent was omitted from gross income if the sums in question were properly includible therein.

We come then to the substantive question whether the payments to petitioner were exempt because he was a resident of a foreign country during each of the years involved. This question also we regard as having been ruled upon adversely to petitioner's position. Although both parties view the question as one of fact, Charles F. Bouldin, 8 T. C. 959, and on that approach it may be assumed that our ultimate finding disposes of the question, it is equally true

that on facts not in any material respect distinguishable from those here present it was determined that the taxpayer was not a bona fide resident of a foreign country. In William B. Cruise, 12 T. C. 1059, the taxpayer, like the present petitioner, was assigned to duties abroad by the American Red Cross. Perhaps less favorably to respondent's contention in the Cruise case the petitioner there spent some three years in one assignment and claimed a possible intention of remaining abroad. Here it seems evident from the circumstances disclosed that petitioner was at all times subject to instantaneous changes of assignment at the direction of the Red Cross; and he did in fact, in the approximately two years in which he was abroad, occupy four different positions in four different countries. He freely admits that his intention at all times was to return to the United States when the necessities of his Red Cross duties were terminated. In each country he was in effect "a mere transient or sojourner." Regulations 111, section 29.211-2.

As in Michael Downs, 7 T. C. 1053, 1059, affd. (C.A. 9), 166 F. 2d 504, certiorari denied 334 U. S. 832, "the good faith of petitioner in going over seas * * * and rendering important and essential services to the war effort cannot be questioned." but as in William B. Cruise, supra, 1063, "His actions from the time he received his Red Cross appointment clearly indicate that he belongs in the same category as other civilian workers who contributed to the war effort by accepting employment in a foreign country * * *" We view the deficiency as determined

both correctly and within the statutory period of limitation.

Decision will be entered for the respondent.

Entered: June 8, 1953.

[Endorsed]: T.C.U.S. Received June 2, 1953.

The Tax Court of the United States
Washington

Docket No. 30464

GEORGE SLAFF, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered June 8, 1953, it is

Ordered and Decided: That there is a deficiency in income and victory tax for 1943 and in income tax for the 1944, in the amounts of $356.25 and $473, respectively.

Enter: June 8, 1953.

[Seal] /s/ CLARENCE OPPER,
Judge

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 30464

GEORGE SLAFF, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW

Comes now the Petitioner, in person, and petitions the United States Circuit Court of Appeals for the Ninth Circuit to review the decision of the Tax Court of the United States in the above matter entered on June 8, 1953, and respectfully states the following:

I.

The nature of the controversy is as to whether a deficiency in income and victory tax exists for 1943 and whether a deficiency in income tax exists for 1944.

The basic issues involved herein are:

(a) Whether the Commissioner of Internal Revenue was barred by the Statute of Limitations from assessing the alleged deficiencies herein.

(b) Assuming that the Commissoner was not so barred, whether the Petitioner was a bonafide resident of a foreign country or countries during period involved and thus exempt from taxation.

II.

This Petition for Review is filed pursuant to Sec-

tions 1141 and 1142 of the Internal Revenue Code.

Venue of the United States Circuit Court of Appeals for the Ninth Circuit is established by virtue of a Stipulation in writing, dated July 10, 1953, heretofore filed in the United States Tax Court, between the attorney for the Commissioner and the Petitioner, in person, stipulating that review may be had in the aforesaid United States Circuit Court of Appeals for the Ninth Circuit.

Dated: August 4, 1953.

/s/ GEORGE SLAFF,
Petitioner Pro Se

NOTICE

To: Kenneth W. Gemmill, Acting Chief Counsel, Bureau of Internal Revenue, Washington, D.C.

Sir:

Please Take Notice that the undersigned has hereby applied for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Tax Court of the United States in the above captioned matter, entered on June 8, 1953, by filing the enclosed Petition for Review with the Clerk of the Tax Court of the United States.

Dated: August 4, 1953.

/s/ GEORGE SLAFF,
Petitioner Pro Se

Affidavit of Service by Mail attached.

[Endorsed]: T.C.U.S. Filed August 24, 1953.

The Tax Court of the United States
Washington

[Title of Cause]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 11, inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the "Designation as to Contents of Record on Review" in the proceeding before The Tax Court of the United States entitled "George Slaff, Petitioner, vs. Commissioner of Internal Revenue, Respondent", Docket No. 30464 and in which the petitioner in The Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 4th day of September, 1953.

[Seal] /s/ VICTOR S. MERSCH,
Clerk, The Tax Court of the United States

[Endorsed]: No. 14054. United States Court of Appeals for the Ninth Circuit. George Slaff, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of Record. Petition to Review a Decision of The Tax Court of the United States.

Filed: September 25, 1953.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit

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In the United States Circuit Court of Appeals for the Ninth Circuit

No. 14054

GEORGE SLAFF, Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE, Appellee.

STATEMENT OF POINTS

Now comes the Appellant herein in person and hereby asserts the following errors which he intends to urge on review by this Court of the Decision of the Tax Court of the United States entered June 8, 1953.

1. That the Tax Court erred in finding that the Petitioner had omitted from gross income reported for the years 1943 and 1944 amounts properly includible therein which, for each of said years, are in excess of 25% of the amount of gross income stated in the respective returns.

2. That the Tax Court erred in holding that the assessment of the deficiency was not barred by the

applicable Statute of Limitations, Sec. 275(a), I.R.C. ("The amount of income taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.") and in holding that the applicable Statute of Limitations was Sec. 275(c), I.R.C. ("If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five years after the return was filed."), and that therefore the action was not barred.

3. That the Tax Court erred in finding that the Petitioner was not a bona fide resident of a foreign country or countries during 1943 or 1944 and in failing to find that the Petitioner's income was exempt from taxation during those years.

4. That the Tax Court erred in entering its Decision wherein it ordered and decided that there is a deficiency in income and victory tax for 1943 and in income tax for 1944 in the amounts of $356.25 and $473.00, respectively.

Dated: October 2, 1953.

/s/ GEORGE SLAFF,
Appellant, Pro Se

Notice of Filing attached.

[Endorsed]: Filed Oct. 5, 1953. Paul P. O'Brien, Clerk.